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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/528,034	03/17/2000	Kevin C. Carter	RTI-1181A	4253

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Bencer & Van Dyke  
1630 Hillcrest Street  
Orlando, FL 32803

EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 12/18/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. 09/528,034	Applicant(s) Carter et al
Examiner Alvin Stewart	Art Unit 3738



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on Nov 13, 2001.
- 2a)  This action is FINAL. 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above, claim(s) 6-13 and 18 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-5 and 14-17 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

- 15)  Notice of References Cited (PTO-892) 18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 19)  Notice of Informal Patent Application (PTO-152)
- 17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

Claims 6-13 and 18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Applicant's election with traverse of Group I (referring to claims 1-5 and 14-17) in Paper No. 6 is acknowledged. The traversal is on the ground(s) that it is unclear how a bone block created in a laboratory or donated by another patient would encompass the current implant which comprises "one or more tendon portions and one or more bone portions.". This is not found persuasive because as discloses in the independent claims 6, and 9 of the above application, the excising of the bone blocks do not need to be attached to a specific tendon. It is well known in the art the removal of bone blocks, tendon and then combining those part to each other by sutures or adhesive in order to be implanted into the human body. Therefore, there are different method of making the bone graft and the ligament. Regarding claim 18, it is well known in the art the use of different tools in order to remove bone from a patient.

The requirement is still deemed proper and is therefore made FINAL.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1, and 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Simon et al US Patent 5,951,560.

Simon et al discloses a plurality of bone blocks (49 & 53) shaped into a dowel or taper and attached to a tendon in a first and second ends (see Fig. 33).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Beck, Jr. et al US Patent 5,961,520.

Beck, Jr. et al discloses at least one bone block made of metal shaped into a dowel. The block is attached to a tendon at a first end (see Figs. 1-3 and 6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 2-5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon et al US Patent 5,951,560 in view of McGuire US Patent 5,562,669.

Simon et al discloses the invention substantially as claimed. However, Simon et al does not disclose a tendon bone graft derived from a patellar tendon, a groove and at least one graft manipulation hole.

McGuire teaches a tendon bone graft derived from a patellar tendon, a groove and at least one graft manipulation hole for the purpose of maintain the patency of the whole system (see Figs. 4a, 4b, 5 and 6; col. 1, lines 17-20 and lines 31-53).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bone blocks and graft properties of the Simon et al reference with the teaching of the McGuire reference in order to increase the biocompatibility of the devices inside the human body and maintain the patency of the bone joint.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. Alvin Stewart whose telephone number is (703) 305-0277. The examiner can normally be reached on Monday-Friday from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703)308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Alvin Stewart

December 10, 2001.

  
CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700